

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE:       Foremost Partners                                     )  
                Ward 028, Block 008, Parcel 00009C   ) Shelby County  
                Commercial Property                             )  
                Tax Years 2005 & 2006                         )

### INITIAL DECISION AND ORDER

### Statement of the Case

The subject property is presently valued as follows:

| <u>LAND VALUE</u> | <u>IMPROVEMENT VALUE</u> | <u>TOTAL VALUE</u> | <u>ASSESSMENT</u> |
|-------------------|--------------------------|--------------------|-------------------|
| \$60,100          | \$289,100                | \$349,200          | \$139,680         |

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on August 22, 2007 in Memphis, Tennessee. In attendance at the hearing were registered agent Robert Kahn and Shelby County Property Assessor's representative Mark S. Richardson, TCA.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 4,872 square foot lowrise office building located at 216 S. Cooper in Memphis, Tennessee.

The taxpayer contended that subject property should be valued at \$246,200. In support of this position, Mr. Kahn introduced into evidence an income approach he maintained supports a value indication of \$246,200. Mr. Kahn's exhibit also included an analysis of three comparable sales which he asserted support value indications ranging from \$167,900 to \$261,275.

The assessor contended that subject property should remain valued at \$349,200. In support of this position, the sales comparison and income approaches were introduced into evidence.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful



than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

In view of the definition of market value, the income-producing nature of the subject property and the age of subject property, generally accepted appraising principles would indicate that the market and income approaches have greater relevance and should normally be given greater weight than the cost approach in the correlation of value indicators.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$349,200 in accordance with Mr. Richardson's income approach. The administrative judge finds that Mr. Richardson's income approach comports with generally accepted appraisal practices and constitutes the most thoroughly substantiated evidence in the record.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, the administrative judge finds that Mr. Kahn's income approach cannot receive any weight for at least two reasons. First, rather than estimating potential gross income by analyzing rent comparables, Mr. Kahn simply utilized the contract rent called for in the lease which commenced on January 1, 2002. The administrative judge finds that such an approach constitutes a leased fee valuation. The administrative judge finds that the Assessment Appeals Commission ruled in *First American National Bank Building Partnership* (Davidson Co., Tax Years 1984-1987) that it "is the entire fee simple unencumbered value and not any lesser or partial interests" which is normally subject to taxation. Thus, an appraisal of the leased fee estate is irrelevant. Second, the administrative judge finds that no evidence was introduced to substantiate Mr. Kahn's assumed vacancy and collection loss allowance, operating expenses or capitalization rate.



The administrative judge finds that Mr. Kahn's sales comparison approach also cannot receive any weight absent additional evidence substantiating his adjustments. For example, sale #1 (2035 Union) sold for \$379,000, but was adjusted by \$211,100 (net) or a whopping 56%.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2005 and 2006:

| <u>LAND VALUE</u> | <u>IMPROVEMENT VALUE</u> | <u>TOTAL VALUE</u> | <u>ASSESSMENT</u> |
|-------------------|--------------------------|--------------------|-------------------|
| \$60,100          | \$289,100                | \$349,200          | \$139,680         |


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 21st day of September, 2007.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Robert N. Kahn  
Tameaka Stanton-Riley, Appeals Manager